

5/21/97

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

MAY 21 1997

Federal Communications Commission  
Office of Secretary

In the Matter of

GC Docket No. 97-113

Electronic Filing of Documents  
in Rulemaking Proceedings

COMMENTS OF SBC COMMUNICATIONS INC

1. SBC Communications Inc., on behalf of its subsidiary companies, Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (collectively referred to as "SBC"), respectfully submits its comments in the above-captioned proceeding.

**I. Introduction**

2. In the Notice of Proposed Rulemaking ("NPRM"), the Commission proposes to allow parties to file comments electronically in most FCC informal notice and comment rulemaking proceedings. We concur with the Commission's tentative conclusion that this action will make it easier for members of the public to communicate their views, and make it easier for the public to review comments that others have filed. The adoption of an electronic filing process will improve efficiency, and reduce the costs of such proceedings to the great benefit of the public. This action is in the public interest, and will further the advancement of the National Information Infrastructure ("NII") by serving as a pragmatic example of how the NII can be utilized to further the public good. SBC also agrees that the adoption of an electronic filing

No. of Copies rec'd  
List ABCDE

0

process will help reduce barriers to entry for small businesses by making it easier for them to communicate their views. Moreover, allowing comments to be filed and retrieved in electronic format serves the public interest. Electronic filing mechanisms will substantially reduce the cost of filing comments by:

- (a) eliminating the need to make multiple copies of comments on paper (and also benefit the environment by reducing the consumption of paper);
- (b) eliminating the need to send multiple copies by mail or messenger (next-day delivery services are particularly costly);
- (c) making it easier and less costly for organizations to distribute filed comments for review within their organizations by reducing the number of xerographic copies which have to be made, and reducing the number of facsimile copies which have to be sent; and
- (d) reducing the delay inherent in distribution of paper documents since electronic distribution systems are substantially faster.

## **II. Formal Status of Electronic Filed Comments**

3. Comments filed in electronic format should be treated as “formal” comments if an electronic filing procedure is going to be effective.<sup>1</sup> The practice of treating electronically filed comments as “informal” would have a chilling effect on parties who wish to make certain that their comments are given due consideration. While it may not have been the Commission’s practice to give “informal” comments lesser weight than that afforded “formal” comments, there is an issue of perception which can be eliminated by expressly recognizing that electronically filed documents have the same weight as comments filed on paper.

4. There is no logical distinction for treating paper and electronic filings differently. Particularly when the Commission frequently requests that comments be filed in electronic

---

<sup>1</sup> NPRM, ¶ 9.

format on diskette, there is no reason why any “papered proceeding” could not be handled electronically with appropriate safeguards. Once the limited electronic filing process discussed here has proven successful, the Commission should expand the procedure to include all Commission proceedings involving public comments.<sup>2</sup> The Commission should also treat Notices of Inquiry (“NOI”) the same as Notices of Proposed Rulemaking and allow electronic filing for NOIs. The electronic filing process can be equally effective in connection with Petitions for Reconsideration, Clarification and other pleadings in pending rulemakings and inquiries.<sup>3</sup>

5. The Commission has asked for comments on any required rule changes.<sup>4</sup> Extensive rule changes are not necessary for electronic filings. Regulations which are too specific with respect to individual technologies or applications may limit the effectiveness of the electronic process. Regulations which mandate a single filing format could be an unnecessary restraint, and have the effect of limiting participation. For example, regulations which limit the format (word processing vs. spreadsheet) or applications (Word vs. WordPerfect) which may be used for filing might limit the participation of some parties. For that reason, the Commission should accept filings in numerous formats<sup>5</sup> and applications<sup>6</sup> as such formats/applications gain

---

<sup>2</sup> Due to the sensitive nature of some proceedings (e.g., formal complaints, audits), or the need to exchange sensitive and proprietary data which may be kept in non-standard formats, there may be good cause for the Commission to deviate from the electronic filing process for such proceedings.

<sup>3</sup> Electronic filing procedures should not, however, be extended to proceedings which are not initiated by the Commission unless express consent of the participants is obtained. For example, the filing of a complaint against one company might be overlooked and result in a missed filing deadline. Only those proceedings expressly designated by the Commission as “Electronic Proceedings” should be subject to the rules which result from this docket.

<sup>4</sup> NPRM, ¶ 9.

<sup>5</sup> Parties should be permitted to submit filings in various file formats such as spreadsheets, word processing, graphics, hypertext markup language (HTML), and ASCII Text.

wide acceptance. While there is a potential that software and cross-platform incompatibility could make it difficult for some participants to read another participant's filing, that issue can be addressed as follows:

- (a) FCC designation of acceptable applications based on the 3 most popular word processing applications which work on all computer platforms<sup>7</sup>, 3 most popular spreadsheet applications which work on all computer platforms, the 3 most popular graphic formats, and any application which is made free to the public via download over the World Wide Web for all computer platforms;<sup>8</sup>
- (b) FCC specification of acceptable fonts and font sizes based on their compatibility across applications and platforms;

---

<sup>6</sup> Parties should be permitted to submit filings created in various applications such as LOTUS, Excel, Word, Works, WordPerfect, Adobe Acrobat, PowerPoint, Nisus Writer, SimpleText, etc.

<sup>7</sup> For the electronic filing procedures to be effective, the regulations must assure that filings are accessible from all types of computers running all the major operating systems. This would require that the designated applications run on computers operating Windows 95, Windows NT, OS/2, DOS 3.1, Mac OS 7, and UNIX operating systems.

<sup>8</sup> For example, graphic files might be submitted in PDF format, or might be filed as gif or jpeg files which are readable by most web browsers.

- (c) Annual review of the designated software and fonts lists by the Commission<sup>9</sup>; and
- (d) FCC requirement that each party using an application which is not on the designated list file an additional copy in HTML, PDF or ASCII Text format.<sup>10</sup>

6. Some filings may require submission of multiple documents in multiple formats in order to create a complete record. The Commission must not adopt regulations which are so inflexible as to make it difficult for parties to make such multi-part and multi-formatted filings.

7. The tentative decision to limit the proposal to comments, reply comments and other documents filed in rulemaking proceedings in order to gain experience with the new system before expanding the scope of the electronic filing option is understandable. Nonetheless, the Commission should immediately authorize electronic filing for Notices of *Ex Parte* Contacts in all proceedings in accordance with the suggestions set forth below. Electronic filing is a desirable option, and, in the years to come, it will become commonplace.

### **III. Implementation Issues**

8. The suggestion that the filing of multiple copies can be replaced with the filing of a single electronic copy which can be automatically distributed to the appropriate Bureaus and Offices, as well as the copy contractor, is especially compelling. This suggestion will save substantial time and money for the parties, as well as the Commission. It will further significantly reduce the chance of error which might result from multiple reproduction of copies.

---

<sup>9</sup> Designation of acceptable applications, and versions of those applications, will be an ongoing concern for the Commission. The Commission must not allow the process of designating acceptable applications to lag behind the pace of technological advancement.

<sup>10</sup> HTML and ASCII text files are capable of being read by a large number of standard software applications. All web browsers are capable of opening HTML formatted documents, and most word processing applications are capable of opening plain ASCII text files. Parties should be cautioned, however, that text attributes, font characteristics and footnotes may be affected by conversion of files to HTML and ASCII text formats, and that they will be responsible for reviewing their documents for any resulting formatting errors.

9. The primary mechanism for electronic filing of formal comments in rulemaking proceedings should be a World Wide Web (WWW) page form such as the form script which is currently in use on the FCC's Web Site. The WWW page form is generally easy to use and is accessible via access to Internet from anywhere in the world. The World Wide Web has been effectively established as a world wide standard, and use of the Web assures the broadest possible access to the public. Since Internet access is virtually ubiquitous, virtually anyone will be able to file comments in most any proceeding.

10. The Commission should find a way to verify that comments filed originated with the party whose name appears on the filing. The Commission should adopt security methods, such as password access, encryption, or reply verification to ensure the comments which have been uploaded to the FCC's server were generated by the signatory to the filing.

11. A password access system would require that the Commission establish a method to assign passcodes to individuals who wish to file. The passcode would be known only to the FCC and the filing party, and would be required prior to uploading the filing. Any document filed without the entry of a password could be accepted by the Commission, but there would be a notation in the record that the filing was unverified so as to protect the reputation of the named party and to further protect the integrity of the electronic filing system.

12. An encryption system would require that the filing party share the decryption algorithm with the FCC. Each filing party would have a unique encryption code. An encrypted file would then be transmitted to the FCC, and decrypted prior to being accepted for filing and posting to the FCC web server for review by interested parties. Since the decryption key is exclusively within the control of the sending party, and is made available to the Commission

who would not be permitted to share it with others, there would be a high degree of confidence that the filed document is legitimate.

13. A reply verification system would require that each party register an agent for service of receipts of filings in order to give that party notice that a filing has been made in their name. Each time a filing is made in the name of a party with a registered agent, the agent would be sent a receipt that the filing has been made and identify the location on the FCC's web server where the document has been stored so that the named party could independently confirm that the document is a legitimate filing. Here, as with the password system, any document filed in the name of a party without a registered agent could be accepted by the Commission, but the record would note that the filing was unverified.

14. The filing of comments in other media is also appropriate. Filing via CD ROM, floppy disk, Magneto Optical disk, DAT, Zip Disk or other readable-writeable hard media (collectively referred to herein as "hard media") are equally useful, provided the Commission has the technical capacity to handle filings in this manner. These hard media are viable alternatives, particularly where very large files need to be transferred (e.g., graphics files). It may be more efficient to transfer large files via hard media in order to reserve bandwidth on the Commission's servers so that the servers will not become bottlenecked as a result of the transfer of large files. The best way to handle this might be to mandate that files in excess of one megabyte be filed via hard media.

15. The FCC's establishment of a Bulletin Board System ("BBS") for those parties who do not have access to the Internet, or who prefer to use direct dial systems, is likewise appropriate. The BBS should be able to manage multiple transmission protocols, but would otherwise be relatively easy to manage.

16. The Commission should adopt a rule that all filings be self-contained. That is, parties should not be permitted to make a filing which includes a hypertext link to another document which is not included in the filing. Because of the frequency of changes to web pages, and the frequent change of web addresses by some parties, there is a substantial risk that critical references could be lost or modified during the course of a pending proceeding, thereby damaging the record. The Commission should expressly make this restriction part of its electronic filing rules.

17. The Commission's discussion in paragraph 18 of the NPRM is generally correct. It is critical for the Commission to adopt a method of confirming receipt of all filings so that the filing party is notified that the Commission's server has received the transmitted files. The process for establishing the time and date of the filing is only relevant if the filing party can be assured that the transmitted file has been received by the Commission's server.

18. Some filings may be delayed or, in some rare cases, prevented altogether. Network bottlenecks or failure of the Commission's access network or servers pose substantial risks that there may be circumstances, particularly where there are a large number of participants, where access to the FCC's server may be blocked by virtue of sheer volume. There may also be times where the FCC's servers fail, or have to be disabled for maintenance or software modifications. The Commission's rules should address such potential situations. One possible solution is establishment of alternative server sites so that parties may attempt to connect to other servers in order to make their filings. Alternative server sites would reduce the risk of late filings and eliminate frustration by parties whose attempts at making a filing would be thwarted by a disabled system. Such alternative sites could be outsourced to trusted agents, similar to the arrangement the Commission has with its Copy Contractor. Finally, the Commission should



establish mirror sites in order to ensure adequate capacity on the Commission's primary server for uploading filings. The mirror site would be used to view and download filings, and could also serve as a backup site when and if the Commission's primary server is unavailable.

19. The Commission tentatively concludes that, where service of documents on another party is required, such service must be made by paper.<sup>11</sup> SBC believes paper service is not necessary. Instead, the Commission should adopt a rule requiring any party who files electronically to also accept service of documents electronically. Such service can be made directly on the party's attorney or directly to an agent for service of such process designated by the party. Then, only where a party has not filed electronically, would it be necessary to obtain that party's consent to electronic service.<sup>12</sup>

20. The Commission generally requests comments of any procedural or administrative issues which arise in the context of electronic filing.<sup>13</sup> Specifically, the Commission asks for comments on file formats, paragraph numbering, system of citations, pagination, and multi-division filings.

21. With respect to paragraph numbering, systems of citations and pagination, SBC believes the issues can be resolved by requiring parties to adopt a paragraph numbering requirement consistent with that employed by the Commission in its official documents. Each paragraph should be numbered sequentially (as SBC has done herein) and all references to the

---

<sup>11</sup> NPRM, ¶ 20.

<sup>12</sup> If such a rule were adopted, the Commission would have to modify its WWW Form page to include a field for designation of the agent for electronic service of pleadings. The Commission would also have to make that information accessible to all participants to a proceeding so that they may identify the proper address to which pleadings must be sent.

<sup>13</sup> NPRM, ¶ 22.

parties' filing can simply be to the paragraph number in the document. Under this system, page numbers become irrelevant.

22. The Commission should also be responsible for distribution of documents to the different subdivisions of the Commission and the Commissioners. In that way, parties would only have to identify the docket when transmitting a filing to the Commission, and the Commission would handle distribution based on the docket number. This method would substantially reduce the barriers to participation since the parties would not have to worry about which division within the Commission need to receive a copy of the filing.

23. One difficult issue is determining which file formats and applications should be permitted or encouraged. As is discussed above, the public interest is best served if the Commission permits multiple formats, generated by different applications running on multiple computer platforms. There is no standard application or format which would satisfy every need. Therefore, the Commission should attempt to identify the most commonly accepted file formats, taking into account the various computer platforms which may be used. This will be an ongoing process and may require regular revision of the list of acceptable formats and applications.

24. The Commission should give special consideration to filing and service of Notices of *Ex Parte* Contacts. Electronic filing mechanisms would be especially effective in filing and distributing *Ex Parte* notices, and these mechanisms should be employed in all pending proceedings. The Commission should establish an electronic mailing list containing email addresses for each party to a particular proceeding. Then, when a party files a Notice of *Ex Parte* Contact, they would also post an email message to the Commission maintained service list indicating the time and date of the *ex parte* contact (and any other relevant information) so that the parties immediately know to check the FCC's website for a copy of the *Ex Parte* filing. This

would have the effect of immediately notifying other parties that the contact had taken place and afford them adequate time to make their own contacts on the proceeding. Since *Ex Parte* notices are only filed in pending proceedings, the electronic service list would be particularly effective in getting information disseminated to interested parties.

#### **IV. CONCLUSION**

25. The Commission's action in establishing rules for electronic filing of comments, replies and other documents in rulemakings is an important step toward advancing effective and widespread participation in Commission proceedings. The rules the Commission adopts through this proceeding will be an excellent testbed for expanding the electronic filing rules to other proceedings. The electronic filing of documents is an essential next-step in the regulatory process. If done properly, electronic filing can simplify and expand participation and also reduce costs to the Commission, the parties and the environment.

[Signature Page Follows]

Respectfully submitted,

SBC COMMUNICATIONS INC.

By: \_\_\_\_\_  
Keith J. Epstein

James D. Ellis  
Robert M. Lynch  
David F. Brown  
175 E. Houston, Room 1254  
San Antonio, Texas 78205  
(210) 351-3478

ATTORNEYS FOR SBC  
COMMUNICATIONS INC.

Marlin Ard  
Keith J. Epstein  
303 Second Street, N. Tower, Suite 650  
San Francisco, California 94107  
(415) 442-4951

ATTORNEYS FOR PACIFIC BELL AND  
NEVADA BELL

Durward D. Dupre  
Mary M. Marks  
Marjorie Morris Weisman  
One Bell Center, Room 3520  
St. Louis, Missouri 63101  
(314) 235-2507

ATTORNEYS FOR SOUTHWESTERN  
BELL TELEPHONE COMPANY

Date: May 21, 1997